IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.799/2005

Decided on.8.5.2008

The Managing Committee, Mohan Middle School.

…Petitioner.

Versus

Joint Labour Commissioner, H.P. and others.
…Respondents

Coram

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting ?[1].

For the petitioner : Mr. K.D. Sood, Advocate.

For the respondents : Mr. Rajinder Dogra, Additional Advocate General for respondents No.1 and 2.

: Mr. Ramakant Sharma, Advocate for respondent No.3..

Rajiv Sharma, J.

A challenge has been laid by the petitioner to order dated 9.6.2005 passed by the Joint Labour Commissioner-cum-Appellate Authority.

The brief facts necessary for the adjudication of this petition are that respondent No.3 retired as a Teacher from the petitioner's school on 31.8.2000. She submitted an application to the

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment***?

Controlling Authority for the payment of gratuity on 30.1.2002 under the Payment of Gratuity Act, 1972. The application was resisted by the petitioner by way of detailed reply. A specific stand was taken by the petitioner before the Controlling Authority that respondent No.3 being a teacher did not fall within the ambit of definition given in section 2 (e) of the Payment of Gratuity Act, 1972. The Controlling Authority directed the petitioner on 27th November, 2003 to pay gratuity within 30 days to respondent No.3. The petitioner preferred an appeal under section 7 (7) of the Payment of Gratuity Act, 1972 assailing the order dated 27.11.2003 before the Appellate Authority. The appeal was dismissed by the Appellate Authority on 9th June, 2005. The petitioner has assailed the order dated 9th June, 2005.

Mr. K.D. Sood, Advocate strenuously argued that the order passed by the Controlling Authority as well as Appellate Authority dated 27.11.2003 and 9th June, 2005 are not sustainable in the eyes of law. He further contended that respondent No.3 being a teacher did not fall within the expression 'employee' and this position has been settled by the Hon'ble Supreme Court in case ***Ahmedabad Private Primary Teachers' Association versus Administrative Officer and others***, (2004) 1 SCC 755.

The learned Additional Advocate General and Mr. Ramakant Sharma, Advocate appearing on behalf of the respondents have supported the order passed by the Controlling Authority as well as Appellate Authority under the Payment of Gratuity Act, 1972.

I have heard the learned counsel for the parties and perused the record carefully.

The question whether the teacher falls within the expression “employee” as per section 2 (e) of the Payment of Gratuity Act, 1972 is no more *res integra* in view of the categorical pronouncement in ***Ahmedabad Private Primary Teachers' Association versus Administrative Officer and others***, (2004) 1 SCC 755 where their Lordships have held as under:

> “Having thus compared the various definition clauses of word `employee' in different enactments, with due regard to the different aims and objects of the various labour legislations, we are of the view that even on plain construction of the words and expressions used in definition clause 2(e) of the Act, `teachers' who are mainly employed for imparting education are not intended to be covered for extending gratuity benefits under the Act. Teachers do not answer description of being employees who are `skilled,' `semi-skilled' or `unskilled.' These three words used in association with each other intend to convey that a person who is `unskilled' is one who is not `skilled' and a person who is `semi-skilled' may be one who falls between two categories meaning he is neither fully skilled nor unskilled. The Black's Law Dictionary defines these three words as under :-
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> > "Semi-skilled work.- Work that may require some alertness and close attention, such as inspecting items or machinery for irregularities, or guarding property or people against loss or injury.
> >
> > Skilled work.- Work requiring the worker to use judgment, deal with the public, analyze facts and

figures, or work with abstract ideas at a high level of complexity.

Unskilled work.-Work requiring little or no judgment, and involving simple tasks that can be learned quickly on the job."

In construing the above mentioned three words which are used in association with each other, the rule of construction noscitur a soclis may be applied. The meaning of each of these words is to be understood by the company it keeps. It is a legitimate rule of construction to construe words in an Act of Parliament with reference to words found in immediate connection with them. The actual order of these three words in juxtaposition indicates that meaning of one takes colour from the other. The rule is explained differently : `that meaning of doubtful words may be ascertained by reference to the meaning of words associated with it'. [See Principles of Statutory Interpretation by Justice G.P. Singh (8th Ed.), Syn. 8 at pg. 379].

The word `unskilled' is opposite of the word `skilled' and the word `semi-skilled' seems to describe a person who falls between the two categories i.e. he is not fully skilled and also is not completely unskilled but has some amount of skill for the work for which he is employed. The word `unskilled' cannot, therefore, be understood dissociated from the word `skilled' and `semi-skilled' to read and construe it to include in it all categories of employees irrespective of the nature of employment. If the Legislature intended to cover all categories of employees for extending benefit of gratuity under the Act, specific mention of categories of employment in the definition clause was not necessary at all. Any construction of definition clause which renders it superfluous or otiose has to be avoided.

> The contention advanced that teachers should be treated as included in expression `unskilled' or `skilled' cannot, therefore, be accepted. The teachers might have been imparted training for teaching or there may be cases where teachers who are employed in primary schools are untrained. A trained teacher is not described in industrial field or service jurisprudence as a `skilled employee'. Such adjective generally is used for employee doing manual or technical work. Similarly, the words `semi-skilled' and `unskilled' are not understood in educational establishments as describing nature of job of untrained teachers. We do not attach much importance to the arguments advanced on the question as to whether `skilled', `semi-skilled' and `unskilled' qualify the words `manual', `supervisory', `technical' or `clerical' or the above words qualify the word `work'. Even if all the words are read disjunctively or in any other manner, trained or untrained teachers do not plainly answer any of the descriptions of the nature of various employments given in the definition clause. Trained or untrained teachers are not `skilled', `semi-skilled', `unskilled', `manual', `supervisory', `technical' or `clerical' employees. They are also not employed in `managerial' or `administrative' capacity. Occasionally, even if they do some administrative work as part of their duty with teaching, since their main job is imparting education, they cannot be held employed in `managerial' or `administrative' capacity. The teachers are clearly not intended to be covered by the definition of `employee'."

In view of the definite pronouncement of the law laid by the Hon'ble Supreme Court, which was brought to the notice of the

Appellate Authority, the appeal was bound to be allowed by the Appellate Authority. The Appellate Authority instead of taking into consideration the law declared by the Hon'ble Supreme Court, which he was bound to follow, had held that the judgment was to apply prospectively. This conclusion of the Appellate Authority is contrary to law. The Appellate Authority could not hold that the judgment of the Hon'ble Supreme Court was to be applied prospectively. The Hon'ble Supreme Court declares the law as it is and it is binding on all the authorities in view of the provisions of Article 141 of the Constitution of India. This position of law is also not disputed by the Advocates appearing on behalf of the parties.

Accordingly, the writ petition is allowed. The order dated 9th June, 2005 is quashed and set aside. There shall be no order as to costs.

(Rajiv Sharma), Judge

May 8, 2008
Awasthi